

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TERRY DEE HAYES	§	PLAINTIFF
	§	
v.	§	CIVIL NO.: 1:14cv154-HSO-RHW
	§	
HUBERT DAVIS, BRENDA SIMS, CHIQUITA BROWN, MICHELLE MORRIS, MARK DAVIS, JOY ROSS, and CODY WAITES	§ § § § §	DEFENDANTS

**ORDER ADOPTING PROPOSED FINDINGS OF FACT AND
RECOMMENDATIONS DISMISSING PLAINTIFF'S CLAIMS FOR
FAILURE TO PROSECUTE**

BEFORE THE COURT is the Proposed Findings of Fact and Recommendations of United States Magistrate Judge Robert H. Walker [28] entered on August 27, 2014, recommending dismissal of Plaintiff Terry Dee Hayes' claims for failure to prosecute. On July 30, 2014, the Magistrate Judge scheduled a Screening Hearing for August 26, 2014. Order Setting Omnibus Hearing 1 [18]. Plaintiff was ordered to appear at the hearing. *Id.* at 1-2. The purpose of the hearing was to determine if dismissal was appropriate under 28 U.S.C. § 1915A(b) or other applicable law, to define the issues to be litigated, to ascertain the potential witnesses or exhibits, to provide appropriate assistance to Plaintiff in obtaining evidence for trial, and to evaluate the case. *Id.*

The docket indicates that on July 30, 2014, the Order [18] was sent to Plaintiff's address of record at South Mississippi Correctional Facility II, #L2365, P.O. Box 1419, Leakesville, Mississippi, 39451. The Order [18] was returned as "undeliverable" on August 11, 2014, and that same day, the Clerk of Court

forwarded the Order [18] to the New Way Transition Center, 916 Inge Street, Jackson, Mississippi, 39203, an address written by hand on the outside of envelope that was returned as “undeliverable.”¹ The docket also reveals that a Writ of Habeas Corpus Ad Testificandum [19] along with a copy of the Order [18] were sent to the South Mississippi Correctional Facility II via certified mail on July 30, 2014, and an acknowledgement of receipt was returned on August 4, 2014.

Plaintiff was not present for and did not otherwise appear at the Screening Hearing on August 26, 2014. Minute Entry August 26, 2014; Proposed Findings of Fact and Recommendations 2 [28]. On August 27, 2014, as a result of Plaintiff's failure to keep the Court apprised of his current address and his failure to appear at the Screening Hearing, the Magistrate Judge recommended dismissal of this case for failure to prosecute. Proposed Findings of Fact and Recommendations 1-2 [28]. The Docket reflects that Plaintiff received the Magistrate Judge's Proposed Findings of Fact and Recommendations [28] on August 28, 2014. Acknowledgement [29].

To date, no objection to the Proposed Findings of Fact and Recommendations has been filed by Plaintiff. Where no party has objected to a magistrate judge's proposed findings of fact and recommendations, a court need not conduct a *de novo* review of the proposed findings of fact and recommendations. *See* 28 U.S.C. § 636(b)(1) (“[A] judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings and recommendations to which

¹ On August 15, 2014, Plaintiff filed a Notice of Change of Address [22] informing that his new address was New Way Transition Center, 916 Inge Street, Jackson, Mississippi, 39203.

objection is made.”). In such cases, the Court need only review the proposed findings of fact and recommendations and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having conducted the required review, the Court finds that the Magistrate Judge’s Proposed Findings of Fact and Recommendations thoroughly considered all issues and is neither clearly erroneous nor contrary to law. The Court, being fully advised in the premises, finds that the Magistrate Judge properly recommended that Plaintiff’s claims should be dismissed for failure to prosecute. The Proposed Findings of Fact and Recommendations should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Proposed Findings of Fact and Recommendations [28] of Magistrate Judge Robert H. Walker entered on August 27, 2014, is adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that this case is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED AND ADJUDGED, this the 1st day of October, 2014.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE